

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5466**

1. Opening of Meeting:

The Appeals Board convened at 10:30, February 14, 2006 in Sacramento, with Chair Joan M. Borucki presiding.

2. Roll Call: Members

Present

Absent

Joan M. Borucki, Chair	x	
Ann Richardson, Vice Chair	x	
Virginia Strom-Martin	x	
Jack Cox		x
Don Novey	x	

3. Approval of the Minutes:

The January 10, 2006 minutes were approved by all members with one correction.

4. Chair's Report:

Chair Borucki stated that the last Labor Agency meeting was cancelled, so she had nothing to report on the Agency level.

5. Chief Administrative Law Judge/Executive Director's Report:

Executive Director/Chief Administrative Law Judge Jay Arcellana began his report by welcoming Board Member Novey back.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that that ALJ I exam was conducted this past Saturday, and there were 247 applicants: 94 applicants in Sacramento, 46 in Oakland and 107 in Los Angeles. The exam proctors were thanked for giving up their Saturday: Tim McArdle, Gail Johnson, Nakesha Robinson and Kim Langan in Sacramento; in Los Angeles, Robert Brady, Ann Ansman, Aldo Garcia and Linda Warren, all from the Pasadena Office of Appeals; in Oakland Amy Oppenheimer, Robert Stone and Andrea Saechao, all from the Oakland Office of Appeals. A makeup exam has been schedule for February 15, 2006 for twelve candidates. Particular commendation was noted for Tim McArdle and the rest of the staff who put the exam together.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that Agency has approved the quarterly meeting for the PJ's and LSS II's, to take place on February 28th and March 1, 2006 in Los Angeles. Work load, staffing issues and budget are on the agenda.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that Tim McArdle provided training, as part of the National Judicial Conference faculty, to Board Members and ALJ's from the Cal OSHA Appeals Board on topics such as decision writing, expert testimony, and ethics. Eight ALJs, two PJs, and the Board Members, including the chair, participated. Executive Director/Chief Administrative Law Judge Jay Arcellana commented that the training went well, and that Tim is to be commended, again, for the significant work and effort that went into this training.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the National Association of Unemployment Insurance Appellate Boards sent an invitation to the Governor to appear at the NAUIAB Annual Conference to be held in San Diego this June. The Governor responded yesterday, saying that he sets his calendar just 45 days in advance, but is very interested in the event. Pat McArdle is the head of the planning committee for this event and should be commended for her efforts. It will be at the Wyndham Hotel in San Diego, with an evening function and dinner at the beach and a mariachi band. The Department of Labor will be attending the conference, and of course the Board Member's are welcome to attend as well.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that he met with the P&PM and Administration branches, and the Sacramento Office of Appeals to plan some remodeling within the Venture Oaks complex to deal with storage issues.

Finally, Executive Director/Chief Administrative Law Judge Jay Arcellana reported, in response to an issue raised by Board Member Strom-Martin at the last meeting, that a team is being assembled to examine the feasibility of an employee survey.

Chair Borucki inquired if the Board members could have room on the PJ/LSS II meeting agenda, to which Executive Director/Chief Administrative Law Judge Jay Arcellana responded affirmatively.

7. Branch Reports:

Executive Director/Chief Administrative Law Judge Arcellana reported that he and PALJ Tim McArdle conducted an all-staff meeting at the Oxnard Office of Appeals, also their first chance to officially welcome new PALJ Jasmine Mukai. Executive Director/Chief Administrative Law Judge Arcellana observed that moral is very high in Oxnard and that Jasmine is going to make an excellent Presiding Judge. Another office meeting is scheduled tomorrow for the Inglewood Office of Appeals.

With respect to the PALJ position, Executive Director/Chief Administrative Law Judge Jay Arcellana reported that he is currently meeting with Personnel Office staff to address recruitment and retention problems. Currently there are approximately 280 ALJs, of whom 250 are eligible to

take the PJ exam. The last time that exam was offered, however, only twelve ALJs took the exam.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the two newest ALJs are doing very well: Joe McGuire of Inland and Cynthia Thornton of San Diego are already hearing cases, and both have done very well on their first quality review scores.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that Barbara Hill is the new LSS I in the Oakland Office of Appeals. She is a long time employee of CUIAB, and she is wished well in her position.

With regard to facilities planning, Executive Director/Chief Administrative Law Judge Jay Arcellana reported that he and PALJ Hugh Harrison have been meeting and discussing outstations. Given the forecast of reduction in workload and corresponding loss of earnings, we are preparing to cut costs in July should it be compelled.

At the last Board meeting the Chair suggested that each quarter a workload report be provided with quarterly and annually comparisons, with just workload highlights given in the interim. Pursuant to that excellent suggestion, Executive Director/Chief Administrative Law Judge Arcellana reported that the workload was fairly consistent during in the last month, with an increase in verifications of 2%, attributable to offices catching up on unverified cases. Adjustments have been made to deal with the drop in workload. The field offices have been asked to no longer schedule in-house mass calendars. The field offices have also been asked to submit a thorough review and recommendation of the use of retired annuitants to prevent the overuse. Currently, there is an average of 3.84 weeks of uncalendared cases statewide, and a very manageable workload.

Finally, Executive Director/Chief Administrative Law Judge Jay Arcellana reported that, pursuant to Vice Chair Richardson's suggestion, interpreters will also be given training in the new digital recordings technology being implemented by the CUIAB.

Member Novey inquired as to how many open ALJ positions presently exist, to which Executive Director/Chief Administrative Law Judge Jay Arcellana responded that there are none at this time. The ALJ examination was conducted at this time because the current list was pretty much exhausted, working now off the sixth rank. Although we don't anticipate any new hires in the immediate future, we still need to be prepared for an upswing in appeals that could occur at any time.

Member Novey also asked why PALJ Tim McArdle went to Mississippi. Tim McArdle responded that he went there to help train retired ALJs from across the country on Mississippi law so they could conduct hearings from their home states via laptops in order to aid in Katrina UI relief. Executive

Director/Chief Administrative Law Judge Jay Arcellana added that it is fairly common for other states to look to California for assistance when emergencies occur.

b. Deputy Chief ALJ, Appellate Operations Steve Angelides reported that in January the appeal rate rose from a 12 month low of 5% back to a more typical rate of 6.9%. As a result, their registrations rose from a four year low of 1058 in December up to 1436 in January, which is 112% of the fiscal year average. Their dispositions remained at the average of 1260. As a result, their balance of open cases rose slightly to 2588, which is 104% of the fiscal year average.

Deputy Chief ALJ Angelides also reported that by continuing to work their retired annuitants as much as they are available to work, continuing to have an ALJ on long term loan from the Sacramento Office of Appeals, and putting the two ALJ IIs who were previously doing administrative and training work half-time back into full-time production, they are managing to keep their dispositions close to where they were before the three ALJ retirements in December of last year. ALJ Randy Peterson will also be helping AO as his schedule allows.

Deputy Chief ALJ Angelides continued to report that the new policy regarding transcripts is now in effect, so the AO ALJs are hearing tapes and digital recordings up to 60 minutes in all cases except tax cases. This resulted in an immediate one-time reduction in the backlog at CTU as the cases with hearings between 45 and 60 minutes which had been waiting to be transcribed were sent back up to AO to be assigned. It is still too early to tell how much of a long term effect the new policy will have on the backlog in CTU. There are also still many long tax cases in CTU, so overtime has been authorized for December, January and February to help clear up the backlog of those cases.

Deputy Chief ALJ Angelides reported that the digital recording pilot ended on January 20th and thus his role as the leader ended as well. He will still be involved in deployment of the digital recording pilot which will begin on March 7th in Sacramento and March 28th in Orange County. The other eight field offices will be deployed between then and October, with a two month break during July and August. CASE will be briefed in the near future on the digital roll-out plans.

The digital recording has opened the opportunity to systematically study the issues in the recording of interpreter hearings. A selected sample has been evaluated and the team has come up with a few simple recommendations that they hope will significantly improve the quality of the recording. First, the microphone is to be placed on the ALJ's table, not the parties table. Second, the interpreter is to be placed between the ALJ and the witness, not on the other side of the witnesses. Third, the interpreter is to speak loudly when speaking English. Fourth, the interpreter is to speak softly when

speaking in the non-English language. Fifth, the ALJ is responsible for making a good record, so if the interpreter is unable to do the simultaneous translation, the ALJ should have the interpreter use consecutive translation. Deputy Chief ALJ Angelides reported that they will include this training as part of the digital recording training, and that they would be training the interpreters as well.

Lastly, Deputy Chief ALJ Angelides reported that in January he met with all of the support staff in AO and CTU. The AO support staff put together an excellent series of presentations on their work, through which he got to know them as well as their work. Deputy Chief ALJ, Appellate Operations Steve Angelides stated he is very pleased with the quality of the support staff in AO and CTU and he is delighted to have the opportunity to work with them as well as with the supervisors in AO and CTU.

Finally, retired ALJ Tamara Pierson remains in Arizona attending to her son who is in the process of coming out of a coma following a serious automobile accident a couple of months ago. His condition is slowly improving, and Tamara and her family are grateful for our thoughts and prayers.

b. Deputy Director, Administrative Services Branch Pam Boston reported that during the month of January, the CUIAB hired one new ALJ in Inland, and one ALJ retired in Fresno.

Deputy Director Boston also reported that the Department of Finance approved the Fresno office relocation, and that the next step is to conduct a site search. A few new outstations were also opened during the month January: one in Concord opened on February 7, one in Oroville opened on February 6, and one in San Bernardino that opened on February 1.

Deputy Director Boston went on to report that the Department of General Services, on behalf of the State of California, has entered into a new rental car service contract agreement. This contract became effective January 2 and will remain in effect until December 31, 2008. Enterprise is now the primary vendor and Van Guard, which is the parent company of Alamo and National, is the secondary vendor. Employees will be responsible for any costs over the contract price.

Deputy Director Boston also reported that the Personnel Services unit completed the Staff Services Manager I examination, and they have recently announced the Office Technician examination.

Deputy Director Boston announced that Judy Pontious in Personnel Services has been promoted to Staff Services Analyst, assigned to the worker's compensation program.

Deputy Director Boston reported that the Information Technology Division has completed the first phase of a change over to the new cellular phone contract. PALJs and Board Members will be receiving their phones within the next week or so. The next phase will be completed by the end of the month.

Deputy Director Boston stated that she will give an in-depth report on the EEO changes at the next board meeting.

c. Deputy Director, Planning and Program Management Branch Mary Walton-Simons was not present at the February Board Meeting. In her place was Budget Officer Renee' Erwin, who reported on CUIAB's budget for next year.

The CUIAB is currently authorized for 717.8 positions and \$78 million dollars. For the 2006-2007 fiscal year there will be a reduction of 52.4 positions to 665.4, and a reduction of 3.4 million dollars to \$74.6 million dollars. Federal funding for the UI program is 86.4% of our total funding, or \$64.5 million dollars. Supplementing that is \$676,000 from the Contingent Fund, .91% of our total funding. This funding was approved by the Legislature to supplement the UI program because there was a short fall in the UI program funding and it is a one year, one time adjustment. The Contingent Fund is made up of penalties and interest collected from employers. The disability funding is at \$8.6 million dollars, 11.6% of our budget. We also receive \$539,000 from the State General Fund, constituting just .72% of our budget. Finally, reimbursements are at \$256,000, .34% of our total budget. Those reimbursements come from hearing room rentals that are sublet to other state agencies and personnel agreements where a judge may do some work for another state agency.

Budget Officer Renee' Erwin reported that the major changes for CUIAB were in the October revise. The UI workload is projected to be about 230,000 cases for the fiscal year 2006-2007, and that is a decrease of 11,232 cases from the current year. The DI program will have a slight increase of about 530 cases, bringing the total to 25,120. The total budget adjustments for 2006-2007 are a decrease of 10,702 cases and a reduction in temporary help positions of 52.4 PYs. The dollar reduction is \$4,383,000, \$4,246,133 for salaries/wages and \$136,867 for benefits and OE&E. The October revise numbers are reflected in the Governors proposed budget and it is anticipated that the Spring finance letters that come out in May will have further workload adjustments and reductions to CUIAB.

Budget Officer Renee' Erwin commented that CUIAB's budget is workload driven, as we earn our budget from issuing decisions. So for each decision or disposition, we earn a designated number of minutes which are converted to positions, which are then converted into dollars. So when the workload declines, CUIAB has to reduce its spending to stay in accordance with the earnings. The Governor's budget sets our authority, or the ceiling

for our spending levels, but CUIAB's resources are issued based on our earnings. CUIAB's budget may exceed the Governors authority if our workload is higher than projected and adjustments are made through the May revise or budget change proposals.

Budget Officer Renee' Erwin reported that major program changes for EDD include a \$3.1 million dollar increase, which works out to be about 14.3 positions to implement their new automated collection enhancement system. This program is supposed to modernize the Department's revenue collection process through automation.

Budget Officer Renee' Erwin reported that detailed budget adjustments for the 2006-2007 fiscal year include an increase of \$16.7 million dollar for an automated collection system, restoration of employment training, reemployment services for unemployment insurance claimants, funding for ID alert process, disability automation project, and funds for the veterans program. There was also an increase of \$1.8 million to their budget for Louisiana work load assistance. So, there is an overall augmentation of 21.6 million dollars to EDD's budget. Finally, the October revise impacted EDD by \$598 million and 146.2 positions.

Board Member Strom-Martin asked what happens to our workload-driven budget if decisions are not issued in a timely manner. Budget Officer Renee' Erwin responded that there is no budgetary impact as to our earnings, but there could be federal sanctions for not meeting those guidelines.

Vice Chair Richardson inquired if our federal funding has always been around 86.42%, to which Budget Officer Renee' Erwin responded that it used to be around 90%, but has tapered off in the last couple of years because of federal shortfalls in the pool of money available to all of the states.

6. Chief Counsel's Report:

Chief Counsel Ralph Hilton reported that the Board member workload has remained consistent at around 24 cases per day.

Chief Counsel Ralph Hilton went on to report that seven new court cases were filed in January, and two were closed, both of which affirmed the Board.

Chief Counsel Ralph Hilton also reported that was an attachment in the Board Members' packets summarizing last year's court cases. A total of 46 cases were closed last year, and of those 36 affirmed the Board, 6 reversed the board, and 3 court decisions were remands.

Also on the litigation front, Chief Counsel Ralph Hilton reported that we received a writ of mandate filing last week in the 2003 Southern California grocery trade

dispute. This is a significant case because it affects so many claimants.

Lastly, Chief Counsel Ralph Hilton introduced Terry Savage, who is taking Kim Hickox's place as Assistant Chief Counsel while she is out on maternity leave.

9. Unfinished & New Business:

Oral argument was presented in Case No. AO-117420.

10. Public Comment:

There was no public comment.

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board went into closed session. No votes were taken in the closed session.